IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 283 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

AHMEDABAD NEW COTTON MILLS CO LTD

Appearance:

1. INCOME TAX REFERENCE No. 283 of 1987
NOTICE SERVED for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 01/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the revenue, the following two questions have been referred to this Court for its opinion under the provisions of Section 256 (1) of the Income Tax Act (hereinafter referred to as "the Act"), by the Income Tax Appellate Tribunal, Ahmedabad bench `A'.

(i) "Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that while considering the disallowance u/s. 40 (c), the medical benefits and House Rent Allowance paid to the Managing directors are not to be considered?"

(ii) "Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that while disallowing travelling expenses under Rule 6D of the I.T. Rules, all the tours undertaken by a person during the year should first be grouped and than limits laid down in Rule 6D should be applied?"

2. Learned advocate Shri Bharat Naik has appeared for the applicant, whereas though served, nobody has appeared for the respondent-assessee.

3. Both the questions have been answered by different Courts during the pendency of this reference. So far as first question is concerned, in the case of Gujarat Steel Tubes Ltd. v. Commissioner of Income Tax, 210 I.T.R. 358, it has been held that medical benefits given to the Managing directors are to be considered while taking into account disallowance under Section 40 (c) of the Act. In the circumstances, so far as the question which pertains to expenditure incurred towards medical benefits given to the Managing director is concerned, we answer the said question in favour of the revenue and against the assessee.

4. So far as the second part of the first question is concerned, it has been held in the case of Commissioner of Income Tax v. Mafatlal Gangabhai and Co. (P.) Ltd., 219 I.T.R. 644 by the Honouarble Supreme Court that the amount of House Rent allowance paid to the Managing directors is not be taken into account while

considering the disallowance under the provisions of Section 40 (c) of the Act. In view of the said judgment, we answer the said portion of the question in favour of the assessee and against the revenue.

5. So far as the second question is concerned, this Court had an occasion to consider a similar question of law in Income Tax Reference No.54/88. After considering different judgments delivered by different Courts, this Court came to a conclusion that all the tours undertaken by an employee during the year are not to be grouped together and the limits laid down under Section 6D of the Income Tax Rule are to be applied with reference to each trip of an individual employee. In view of the said observations made by this Court, we answer the second question in the negative i.e., in favour of the revenue and against the assessee.

The reference stands disposed of accordingly with no order as to costs.

1.8.2001. (A.R. Dave, J.)

(D.A. Mehta, J.)
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